

Remarks

Claims 1-30 were pending in this application. Claims 1-24 have been cancelled. Claim 25 has been amended. The amendments made herein to the specification and claims do not incorporate new matter into the application as originally filed. Support for the amendments can be found in the drawings and throughout the instant specification.

As an initial matter, it should be noted that aspects of the present invention are directed to an abrasion device and use of the device having specialized protrusions by positioning the abrader device on the skin of a patient, structures and steps for retaining and applying a therapeutic substance to the skin of the patient and rotating the protrusions against the skin to disrupt the skin, thus delivering the therapeutic substance to the skin.

Claim Rejections under 35 USC § 102

The Examiner has rejected Claims 1-7 and 9-24 under 35 U.S.C. §102(b) as being anticipated by Sage et al., (EP 1086719) (hereinafter “Sage”). Without discussing the merits of the rejection, applicants have cancelled Claims 1-24, without prejudice, thereby rendering the 102 rejection based on Sages as moot. Applicants respectfully requests that the Examiner withdraw the 35 U.S.C. §102 rejection.

Claim Rejections under 35 USC § 103 (Guyein view of Sage II)

The Examiner has rejected Claims 1-30 is rejected under 35 U.S.C. 103(a) as being obvious over Guye U.S. Patent 2,688,970 (hereinafter “Guye”) in view of Sage U.S. Patent 6,835,184¹ (hereinafter “Sage II”). Applicants respectfully traverse this rejection. The Examiner has indicated “Guye discloses a microprotrusion array and method of delivering a therapeutic substance via an abrader device comprising all the limitations recited in claims 1 and 25,” except the frustoconical shape to which the Examiner seeks to utilize in the rejection from the disclosure of Sage II. Initially, it is noted that the Office has not identified where in Guye an alleged obviousness teaching is to be found regarding all the limitations (barring the frustoconical limitation) of claims 1 and 25.

¹ Applicants note that only EP 1086719 to Sage was listed on Form PTO-892, Notice of References Cited, and therefore have assumed the Examiner has also included US Patent 6,835,184 as outlined in the office action. If this assumption is in error, applicants respectfully request clarification.

Additionally, the examiner cites no portion of Guye in support of the contentions that Guye provides an adequate basis for the 103 rejection. Still further, Applicant has carefully reviewed the remainder of patent to Guye, and finds no teaching of all the teaching of Claim 1 and 25. In the event that the Office maintains the rejection of independent claim 25 under 35 U.S.C. §103, Applicant respectfully requests that the Office, in the interests of compact prosecution, identify on the record and with specificity sufficient to support a prima facie obviousness case, where in the Guye patent the subject features of independent claim 25 of the method for delivering a therapeutic substance is alleged to be taught.

Furthermore, the amended Claim 25 is not taught or suggested by the combination of Guye and Sage II. The additional limitations of a radially extending (from the center) portion of abrader free area on the platen having a substantially constant width clearly distinguishes over the disclosure of Guye and Sage II. Therefore, since the resultant device of the combination of Guye and Sage II does not describe or suggest either alone or in combination any of the currently claimed limitations, this combination of references cannot render the Applicants' invention as obvious. Applicants respectfully requests that the Examiner withdraw the 35 U.S.C. §103 rejections against Claims 25-30.

Claim Rejections under 35 USC § 103 (Garstein in view of Sage II)

The Examiner has rejected Claims 1-30 is rejected under 35 U.S.C. 103(a) as being obvious over Garstein et al. U.S. Patent Publication 2002/00445859 (hereinafter "Garstein") in view of Sage II. Applicants respectfully traverse this rejection.

The claims as now amended have specific limitations as outlined above that are not taught or suggested by Garstein or Sage II, alone or in combination. Figure 21, as cited by the Examiner does not show or suggest a radially extending portion from the center having an absence of protrusions. The Applicant contends that independent claim 25, as now presently amended, and dependent claims 26-30 distinguish over both Garstein and Sage II and the rejection is moot. Therefore, since the resultant device of the combination of Garstein and Sage does not describe or suggest either alone or in combination any of the currently claimed limitations, this combination of references

cannot render the Applicants' invention as obvious. Applicants respectfully requests that the Examiner withdraw the 35 U.S.C. §103 rejections against Claims 25-30.

Conclusion

In view of the Remarks above, applicant respectfully submits that Claims 25-30 are in condition for allowance, and respectfully requests that the Examiner earnestly reconsider the rejections and objections of the present application. Applicant hereby authorizes the Commissioner to charge the fees necessary in connection with this Response, RCE, and any other fees necessary in connection with this application, to Deposit Account Number 02-1666.

In light of the above amendments and remarks, Applicant respectfully requests that the Examiner enter the amendments and consider the remarks made herein. Consideration and prompt allowance of the claims are respectfully submitted.

Any questions concerning this application or amendment may be directed to the undersigned agent of applicant.

Respectfully submitted,

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